

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

THE ART INSTITUTE OF PHILADELPHIA
LLC, *et al.*,¹

Debtors.

GEORGE L. MILLER, Chapter 7 Trustee,

Plaintiff,

v.

TODD S. NELSON, JOHN R. McKERNAN,
SAMUEL C. COWLEY, EDWARD WEST,
MARK A. McEACHEN, FRANK JALUFKA,
J. DEVITT KRAMER, MARK NOVAD, JOHN
DANIELSON, AND MICK BEEKHUIZEN,

Defendants.

Chapter 7

Case No. 18-11535 (CTG)

(Jointly Administered)

JURY TRIAL DEMANDED

Adversary Proceeding

No. 20-50627 (CTG)

**DEFENDANTS MARK McEACHEN, FRANK JALUFKA, AND
JOHN DANIELSON’S (I) MOTION TO DISMISS FIRST AMENDED COMPLAINT, OR
IN THE ALTERNATIVE, (II) MOTION FOR A MORE DEFINITE STATEMENT,
(III) MOTION TO EXTEND ANSWER DEADLINE, AND
(IV) JOINDER TO REQUEST FOR JUDICIAL NOTICE**

Defendants Mark McEachen, Frank Jalufka, and John Danielson (collectively, “Later Defendants”) hereby (1) move (the “Motion”) (i) to dismiss certain claims set forth in the First Amended Complaint [Adv. D.I. 91] (the “FAC”) filed by plaintiff George L. Miller, as trustee for The Art Institute of Philadelphia, *et al.* (“Trustee”), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Fed. R. Civ. P.”), made applicable to this adversary proceeding by Rule

¹ Due to the large number of debtors in the above-captioned jointly-administered chapter 7 cases (the “Chapter 7 Cases”), a complete list of such debtors (the “Debtors”) and the last four digits of their federal tax identification numbers is not provided herein. Such information can be found at footnote 1 of the Complaint (as defined below).

7012(b) of the Federal Rules of Bankruptcy Procedure (the “Fed. R. Bankr. P.”), (ii) for a more definite statement with respect to certain claims set forth in the FAC, pursuant to Fed. R. Civ. P. 12(e), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b), and (iii) to extend the answer deadline for any surviving claims from the FAC through and including the earlier of (a) the date that is forty-five (45) days after Trustee files an amended complaint providing a more definite statement as requested herein or (b) such deadline as may be set by the Court for the other Defendants to answer or otherwise respond to any claims not dismissed pursuant to this Motion and the concurrently-filed motions to dismiss and briefs in support thereof filed by Defendants John Devitt Kramer, Mark Novad, Edward West, and Mick Beekhuizen (the “Defendants’ Briefs”) pursuant to section 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ et seq. (the “Bankruptcy Code”) and Fed. R. Bankr. P. 9006(b); and (2) join (the “Joinder”) in the concurrently-filed Request of Defendants John Devitt Kramer and Mark Novad to Take Judicial Notice in Support of Motion to Dismiss the First Amended Complaint [Adv. D.I. 95]. In support of the Motion, Later Defendants incorporate by reference the accompanying memorandum of law (the “Opening Brief”), filed contemporaneously herewith.

Pursuant to Rule 7012-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, Later Defendants do not consent to the entry of final judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

WHEREFORE, Later Defendants respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A:

(i) dismissing with prejudice (a) all claims against each Later Defendant in Claim I for any alleged breaches occurring before such Later Defendant is first alleged to have become a fiduciary of any Debtor, (b) all claims against each Later Defendant in Claim III for any alleged civil conspiracy occurring before such Later Defendant is first alleged to have become a fiduciary of any Debtor, and (c) all claims against Later Defendants under Claims VII, VIII, IX, and X;

(ii) requiring a more definite statement (a) as to any claims in Claim I not dismissed pursuant hereto, regarding, at a minimum, (1) the capacity in which Trustee is bringing such claims, (2) to whom the duties allegedly breached by each Later Defendant were purportedly owed, (3) which alleged breaches were committed by Later Defendants, (4) during which period such alleged breaches were committed, and (5) the state of formation of any relevant entities; and (b) as to all claims in fully-dismissed Claims (Claims II, IV, V, and VI) and partially-dismissed Claims (Claims I, III, and IX) that Trustee is not seeking to revive through amendments, clarifying that not only are such dismissed claims included “solely for the purpose of preserving the Trustee’s appellate rights,” but for all other purposes, such claims shall be disregarded as dismissed and, notwithstanding anything in the FAC to the contrary, any allegations with respect thereto shall not be incorporated by reference into other sections of the FAC;

(iii) extending Later Defendants’ April 1, 2022 deadline to answer or otherwise respond to the FAC pursuant to the Court’s February 4, 2022 Order on Motions to Dismiss [Adv. D.I. 90] through and including the earlier of (a) the date that is forty-five (45) days after Trustee files an amended complaint providing a more definite statement as requested herein or (b) such deadline as may be set by the Court for the other defendants to answer

or otherwise respond to any claims not dismissed pursuant to this Motion and Defendants' Briefs; and

- (iv) granting such other and further relief as the Court deems just and proper.

[Signature Page Follows]

Dated April 1, 2022

/s/ Sean M. Beach

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